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August 19, 2016

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VIA HAND DELIVERY

Federal Election Commission
Jeff S. Jordan, Assistant General Counsel
Office of Complaints Examination
and Legal Administration
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Washington, DC 20463

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FEDERAL ELECTION
COMMISSION
2016 AUG 22 PM 1:34
OFFICE OF GENERAL
COUNSEL

Re: MUR 7091
Representative Patrick Murphy, Friends of Patrick Murphy and Brian Foucart, in
his official capacity as Treasurer.

Dear Mr. Jordan:

We write as counsel to Representative Patrick Murphy, Friends of Patrick Murphy and Brian Foucart, in his official capacity as Treasurer (collectively, "Respondents") in response to the complaint filed by Senate Leadership Fund on June 22, 2016 (the "Complaint"). The Complaint consists solely of unsupported speculation, alleging that several contributions made to Friends of Patrick Murphy may have been made in the name of another in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint does not provide any credible evidence to back up its claims and relies on nothing more than publicly reported contributor information. Moreover, even if there were any validity to its speculation, the Complaint does not allege any facts that, if true, would amount to a violation of the Act by Respondents themselves. As there is no evidence to suggest that Respondents knew or should have known that the contributions in question could have been made in the name of another at the time they were received, Respondents did not violate the Act regardless of whether there actually was some issue. Finally, many of the relevant contributions were made so long ago that the statute of limitations bars any Commission action. For all of these reasons, the Commission should find no reason to believe a violation occurred and immediately dismiss the Complaint with respect to Respondents.

The Commission may find "reason to believe" only if a complaint sets forth sufficient facts, which if proven true, would constitute a violation of the Act. 11 C.F.R. § 111.4(a), (d); FEC Matter Under Review 4960 (Clinton for U.S. Senate), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 1 (Dec. 21, 2000). Moreover, unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. FEC Matter

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Under Review 4960 (Clinton for U.S. Senate), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 2 (Dec. 21, 2000).

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The Complaint alleges Respondents violated 52 U.S.C. § 30122, which prohibits a committee from “knowingly accept[ing] a contribution made by one person in the name of another person.” See Complaint at 5. However, the Complaint fails to point to a single piece of actual evidence that demonstrates that any of the contributions at issue were made in the name of another person, much less that any of the Respondents had knowledge of any illegality. Rather, the Complaint amounts to mere suggestion that the referenced contributions are suspicious based on the alleged relationships between the donors and the timing of the contributions. Contrary to the inflammatory language of the Complaint, there is nothing inherently suspicious about either a group of family members or two individuals who are employed by the same company and their spouses contributing to a federal candidate committee around the same time.

In the past, the Commission has repeatedly held that this kind of pure speculation or reliance on circumstantial facts cannot support a reason to believe finding. See e.g., FEC Matter Under Review 5538 (Gabbard), First General Counsel’s Report at 4 (Mar. 24, 2006) (“[t]he Complainant’s allegations that contributions were reimbursed based merely on their reported addresses, religions, or occupations are precisely the sort of ‘mere speculation’ that will not sustain a finding of reason to believe. People who share the same address, or business or property interests, or are members of the same religious congregation frequently make contributions, without those contributions having been reimbursed.”); see also FEC Matter Under Review 4850 (Fossella), Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas at 2 (Jul. 20, 2000) (granting “little, if any” weight to the fact that company employees made contributions to a committee on the same day and noting that if the Commission were to accept that circumstance as sufficient evidence to make reason to believe findings of conduit contributions it would “have time for investigations of little else.”). The Commission held in Matter Under Review 4850, that when, as is the case here, a Complaint consists of nothing more than naked speculation regarding alleged conduit contributions, it should be dismissed based on that fact alone, and a committee has no obligation to prove that the accusations are false.

A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents. While a respondent may choose to respond to a complaint, *complainants* must provide the Commission with a reason to believe violations occurred. The burden of proof does not shift to a respondent merely because a complaint is filed. In this instance, the complaint states only that conduit contributions “appear to have been made.” The complaint itself literally fails to make any factual showing to support an accusation that [respondent] violated the FECA . . . we cannot allow mere conjecture (offered by a political opponent’s campaign) to serve as a basis to launch an investigation, simply because the conjecture is met by less than the most explicit denial. FEC Matter

Under Review 4850 (Fossella), Statement of Reasons of Chairman Wold and
Commissioners Mason and Thomas at 2 (Jul. 20, 2000) (emphasis in original).

The Complaint does not provide the Commission with any basis to launch an investigation in this matter.

Moreover, in past enforcement actions, even where circumstantial evidence did raise suspicions that a contribution was made in the name of another, the FEC has dismissed complaints against campaign committees where there was no evidence to suggest that the campaign committee knew of the unlawful nature of the contributions. *See, e.g.*, FEC Matter Under Review 5187 (Mattel, Inc.), First General Counsel's Report at 22-23 (Feb. 19, 2002); FEC Matter Under Review 5119 (Friends of John Hostettler), Second General Counsel's Report at 2, 12-13 (Dec. 28, 2001). Here, the Complaint does not allege anything to suggest knowledge of illegal contributions on the part of Respondents, nor does it allege any facts that demonstrate how, upon examination of the contributions at the time of receipt, Respondents should or could have found any evidence of illegality. *See* 11 C.F.R. 103.3(b).

In addition to the Complaint's failure to present any facts that would prove a violation of the Act, the majority of the contributions at issue were given to Friends of Patrick Murphy outside of the five year statute of limitations period and the rest will be outside of the statute of limitations shortly. *See* 28 U.S.C. § 2462 (statute of limitations for civil penalties); 52 U.S.C. § 30145 (statute of limitations for criminal penalties); *see also* *FEC v. National Republican Senatorial Committee*, 877 F.Supp. 15 (D.D.C. 1995) (holding that 28 U.S.C. § 2462 applies to FEC actions for the assessment of civil penalties, and that the limitations period begins to run at the time the alleged offense is committed); *FEC v. National Right to Work Committee, Inc.*, 916 F.Supp. 10 (D.D.C. 1996) (same). These long ago contributions cannot be the basis of any investigation against the Respondents

Finally, the Complaint makes a conclusory statement that Representative Murphy, as Treasurer of Friends of Patrick Murphy, filed an FEC report that erroneously listed the occupation of a donor named Millerlandy Badillo. *See* Complaint at 3-5. The quarterly report filed by Friends of Patrick Murphy that lists the contribution at issue from Millerlandy Badillo was filed on April 15, 2011, more than five years ago. Nothing in the Complaint presents any facts that demonstrate, that at the time the FEC report was filed, Millerlandy Badillo did not hold the occupation provided by Friends of Patrick Murphy or that Representative Murphy, in his capacity as Treasurer, failed to use his best efforts to obtain, maintain and submit Millerlandy Badillo's occupation as required by the Act. *See* 52 U.S.C. § 30102(i); 11 C.F.R. § 104.7(a). In any event, any reporting issue with respect to that contribution falls outside the statute of limitations.

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As explained above, the Complaint does nothing more than point to a series of publicly reported contributions, the majority of which were made outside the five year statute of limitations period, to speculate without any objective evidence that such contributions may have been made in the name of another. This kind of baseless speculation does not amount to an allegation of facts that, if true, would constitute a violation of the Act. There is nothing in the Complaint to suggest that Respondents knew or should have known that there were any issues with these contributions. Accordingly, the Commission must find no reason to believe a violation occurred and dismiss the Complaint with respect to Respondents.

Very truly yours,



Marc E. Elias
Graham M. Wilson
Jacquelyn K. Lopez
Counsel to Respondents

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